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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

NO. 267

JOHN CALCATERRA,

Appellant,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

(ON APPEAL FROM THE SUPREME COURT OF ILLINOIS)

MOTION TO DISMISS.

WILLIAM G. CLARK,
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Attorney for Appellee.

RICHARD A. MICHAEL,
Assistant Attorney General,
Of Counsel.

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MOTION TO DISMISS.

The People of the State of Illinois, appellee herein, by William G. Clark, Attorney General of the State of Illinois, pursuant to Rule 16 1 (b) of the Revised Rules of the Supreme Court of the United States moves to dismiss the appeal on the ground that it does not present a substantial federal question.

ARGUMENT

This appeal raises the sole question of whether the State of Illinois has the power to declare that it is unlawful to agree to sell or give a person a narcotic drug and actually deliver a non-narcotic substance.

The substance of the appellant's argument is that such a law in no way furthers the health, safety, or morals of the people and is, therefore, not justified by the police power of a state. Thus he concludes it is an unjustified interference with personal liberty and unconstitutional under the Due Process Clause of the Fourteenth Amendment.

It is not necessary for purposes of this motion to discuss the limitations imposed by the Fourteenth Amendment on the power of a state to enact criminal laws on a subject over which jurisdiction has not been granted to the Federal Government by the Constitution for it is clear that the law in question is in furtherance of the health, safety, and morals of the people and is, therefore, within the police power of a state.

First, it is clear that to purport to sell one substance, even an illegal one, and deliver a worthless substitute is fraudulent conduct which a state may properly take means to suppress. To prey on the weakness of a narcotic addict by taking his funds whether or not the illegal substance is given in return is anti-social behavior.

Secondly, by holding himself out as a source of supply a person is encouraging the narcotics trade and making it appear more popular than it is, and such conduct may properly be treated criminally.

Finally, a person who sells a non-narcotic substance as a narcotic is in most instances a person who also sells

actual narcotics. Often he tests a new prospective purchaser by this means to insure he is not a police informer. Absent the type of statute here involved, there would be little or no way to apprehend such a seller. See *People* v. *Shepard,* 169 Cal. App. 2d 283, 337 P. 2d 214. The absence of the statute gives such a seller safety if it is a controlled sale and additional funds to carry on his illegal activity if it is not.

The most significant reason why it is legal to prohibit this conduct is that it serves no social purpose. An act which cannot serve a good purpose can only achieve improper ends. It is to be noted that every act declared by this Court to be outside the police power of the state constituted an interference with a proper and legal business or freedom. The conduct here in question has no redeeming social value and can only yield anti-social results.

CONCLUSION.

It is respectfully submitted, therefore, that appellant presents no substantial federal question for the decision of this Court and that this appeal should be dismissed.

Respectfully submitted,

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